NO. 21373

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEO EDWIN BROMBERG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WM. MATTHEW BYRNE, JR.,
United States Attorney,
ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

600 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

Attorneys for Appellee,
United States of America.

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I

STATEMENT OF PLEADINGS AND FACTS DISCLOSING JURISDICTION

On June 16, 1965, the Federal Grand Jury for the Southern District of California, returned indictment No. 35017-CD, in three counts, charging Appellant Leo Edwin Bromberg with violations of 26 U.S.C. §7206 (Count 1) and 18 U.S C. §287 (Counts 2 and 3).

The indictment alleged in substance as follows:

Count 1 - On or about December 10, 1960, Appellant willfully and knowingly made and subscribed a joint income tax return under penalty of perjury which he did not believe to be true and correct, as Appellant on said tax return stated that the gross income for

himself and his wife for 1959 was $69,485.03, and the net operating loss for 1959 was $88,026.68, whereas he then and there knew and believed that the gross income of himself and his wife for 1959 was $102,484.95 and the net operating loss for 1959 was $13,026.76.

Count 2 - On December 10, 1960, Appellant presented to the Treasury Department through the District Director of Internal Revenue (District of Los Angeles), a claim for refund consisting of a claim Form 843, and an application for tentative carryback adjustments Form 1045, stating that as a result of a net operating loss of $88,026.68 for the calendar year 1959 there was a decrease in income tax liability for the taxable years 1956, 1957 and 1958 by reason of a carryback loss. Appellant therein claimed a refund in the amount of $4,895.15 for the taxable year 1957, which claim Appellant knew to be fraudulent in that the true and correct net operating loss for the taxable year 1959 was in the sum of $13,026.76 and there was no net operating loss carryback for the taxable year 1957.

Count 3 - On December 10, 1960, the Appellant presented to the Treasury Department through the District Director of Internal Revenue (District of Los Angeles), a claim for refund consisting of a claim, Form 843, and an application for tentative carryback adjustments, Form 1045, stating that as a result of a net operating loss of $88,026.68 for the taxable year 1959 there was a decrease in income tax liability for the taxable years 1956, 1957 and 1958 by reason of a carryback loss. Appellant therein claimed

a refund in the sum of $661.68 for the taxable year 1958, which claim Appellant knew to be fraudulent in that the true and correct net operating loss for the taxable year 1959 was in the sum of $13,026.76 and there was no net operating loss carryback for the taxable year 1958 [C. T. 2-5]. 1/

On July 19, 1966, Appellant was arraigned [C. T. 6, 7]. Appellant entered pleas of not guilty to the charges in the indictment on October 25, 1965 [C. T. 6].

On January 10, 1965, Appellant waived trial by jury and the court trial of Appellant commenced on January 10, 1966, before the Honorable Peirson M. Hall [C. T. 20, 21]. At the close of the Government's case on January 10, 1966, Appellant made a motion for judgment of acquittal, which motion was denied [C. T. 30]. At the conclusion of the trial on February 4, 1966, Judge Hall found Appellant guilty as charged [C. T. 47].

On February 9, 1966, Appellant filed motions for a New Trial, Judgement of Acquittal and Arrest of Judgment [C. T. 48-51]. On February 28, 1966, after hearing, Judge Hall denied these motions and sentenced Appellant to imprisonment for a term of one year on Count 1, a fine of $5,000 on Count 2, and to imprisonment for a term of one year on Count 3, sentences to run concurrently [C. T. 52 and 53].

A timely notice of appeal was filed by Appellant [C. T. 54-55].

The United States District Court for the Southern District of

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1/ C. T. refers to Clerk's Transcript.

California had jurisdiction in this case pursuant to 26 U.S.C. §7206(1) and 18 U.S.C. §§ 287 and 3231.

II

STATUTES INVOLVED

26 U.S.C. §7206(1) provides:

Any person who--

(1) Declaration under penalties of perjury. Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; (shall be guilty of a felony).

18 U.S.C. §287 provides:

False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the . . . service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be guilty of a felony.

III

STATEMENT OF THE CASE

A. QUESTIONS PRESENTED

Appellant, on pages 6 and 7 of his Brief under the heading "ISSUES PRESENTED" and "SPECIFICATION OF ERRORS", lists five contentions under each heading; we have winnowed these to the following questions which appear to be the questions that Appellant seeks this Court to review:

1. Was the evidence sufficient to convict Appellant of each of the three counts?

(a) Does the evidence support the court finding that Appellant on his 1959 tax return willfully and knowingly made a false statement of a material matter by understating his gross income by the sum of $32,999 and overstating his net loss in the sum of $75,000?

(b) Does the evidence support the court's finding that Appellant (based upon a net operating loss of $88,026.65 in his 1959 tax return) knowingly and fraudulently submitted a false application for carryback adjustment and claims for refund in the amount of $4,895.15 for the year 1957 and $661.65 for the year 1958?

2. Did the court commit prejudicial error in refusing to allow Appellant to attempt to prove that Appellant's income tax returns for the years 1956, 1957 and 1958, did not correctly reflect

his income in three years and that Appellant had losses in 1960, 1961, 1962, 1963 - when Appellant filed no returns for the subsequent years?

B. STATEMENT OF FACTS

On December 10, 1960, after obtaining two extensions - Appellant (an attorney with a Masters degree in taxation) together with his wife filed their 1959 Income tax return [R. T. 539, 558, 1006; Exhibit 1D]. [2/] The return which was signed by Appellant under penalty of perjury reported as follows:

Gross Income	$ 69,485.03
Net loss from legal practice	(24,377.22)
Other Business Losses	
Loan to Barnhart Morrow Corp. - Defunct	(21,649.46)
Confiscation of bank account by Cuban (Castro) Government	
NET LOSS	$(88,026.68)

Concurrently with filing his 1959 return, Appellant filed claim applications for tax refund Form 843 (Exhibits 2B, 2C, 2D) together with an Application for Tentative Carry Back Adjustment, Form 1045 (Exhibit 2A). The claims for a tax refund in the years 1956, 1957 and 1958, were based upon the net loss of $88,026.68

2/ R. T. refers to Reporter's Transcript.

reported by Appellant in 1959. Appellant and his wife, pursuant to their claims for refund, in fact received tax refunds (Exhibit 2E) as follows:

1956 - $3,476.98 plus $213.76 interest

1957 - $9,774.55 plus $600.93 interest

1958 - $1,323.36 plus $ 81.36 interest

The indictment and the government's case were based on Appellant's understatement of gross income in the amount of $32,999, and in the overstatement of the operating loss in the amount of $42,000 [C. T. 2-5, 10-12]. The effect of these false statements was the overstatement of Appellant's net loss by $75,000, thus reducing his net loss from $88,026.68 to $13,026.76.

1. The $42,000 Cuban Loss Transaction.

Appellant, in 1958, represented a Mr. George Wilson, who was President of the Wilson Mortgage Company and a client of Appellant for some years. In late 1958, Appellant discussed with Mr. Wilson and one Louis Brady and Eugene Warner the organization of a corporation to distribute Schenley liquor products in Cuba. The corporation was to be known as the Carribean Liquor Distributors, Inc. [R. T. 203-206]. Appellant informed Mr. Wilson that the Schenley Company had asked that the Carribean Liquor Distributors, Inc. evidence some financial responsibility and requested Mr. Wilson to deposit $50,000 in a bank in Cuba as evidence of financial

strength of that corporation. Appellant informed Wilson that it would only be necessary for the $50,000 to be left on deposit for a short time, and in return Wilson was to receive a controlling interest in Carribean Liquor Distributors, Inc. [R. T. 212]. Sometime in the middle of December 1958, Appellant, Wilson, Brady and Warner travelled to Cuba; and Mr. Wilson, in the presence of Appellant, deposited $50,000 in the Banco Continental Cubano in Havana, Cuba, in an account entitled "Carribean Liquor Distributors, Inc." [R. T. 212-213]. Wilson testified that it was his understanding from Appellant that the money was to remain on deposit for about two weeks, and that no part of the $50,000 was contributed or belonged to Appellant [R. T. 213-215]. The authorized signatories on the account were Mr. Wilson and Appellant [R. T. 236].

In the last week of December 1958, the Batista regime fell and Castro seized power in Cuba [R. T. 207]. In January 1959, Mr. Wilson learned that the Schenley Liquor Company did not approve the Carribean Liquor Distributors, Inc. becoming a distributor for its products [R. T. 231]. Mr. Wilson then attempted to retrieve his $50,000 from the Banco Continental Cubano by a bank collection draft [R. T. 216]. The draft was not honored by the Cuban bank. Mr. Wilson then discussed the matter with Appellant, who stated that he (Appellant) could go to Cuba and get the $50,000, and Wilson stated: "Fine go ahead." [R. T. 216]. Through later conversations with Appellant, Wilson learned that Appellant went to Cuba in an effort to retrieve the $50,000 [R. T. 216, 217].

In Cuba Appellant obtained a portion, $8,000 in pesos, and $42,000 in cashier's checks (3 checks in amount of $14,000 each). At this time it was a criminal offense punishable by death to take currency out of Cuba [R. T. 964]. Appellant was unable to negotiate the cashier's checks in Cuba and after spending the $8,000 there returned to the United States with the 3 cashier's checks [R. T. 963, 965, 966). Appellant then attempted to negotiate the cashier's checks through the Citizens National Bank; however, the Citizens National Bank was unable to negotiate the checks and returned them [R. T. 966-967]. Appellant then turned the three cashier's checks over to Edward Jaffee, and suggested that Jaffee go to Cuba and attempt to buy $42,000 worth of airline tickets [R. T. 967, 969].

Mrs. Marjorie Rubin, testified that in June or July of 1959, she received three cashier's checks totaling $42,000 drawn on the Banco Continental Cubano and payable to the order of Appellant from Edward Jaffee [R. T. 283, 284]. Mrs. Rubin had been informed by Mr. Jaffee that she should meet an airline pilot at the airport in Havana, Cuba and receive a book. She went to the airport and received a book entitled "The Ugly American" [R. T. 286]. Inside of the book were the three cashier's checks each in the amount of $14,000. By telephone Mr. Jaffee then instructed Mrs. Rubin to negotiate the checks for travel tickets in the amount of $42,000. One-half of the travel tickets to be made out in the name of Mr. and Mrs. Edward Jaffee and one-half made out in the name of Mr. Mrs. Leo Bromberg [R. T. 287]. Mrs. Rubin attempted to negotiate these cashier's checks at the Banco Continental Cubano;

however, before she could successfully consummate the negotiation of the checks she was arrested by the Cuban police [R. T. 289], held in detention and the checks were confiscated by the Cuban Agarian Land Reform [R. T. 290]. Mrs. Rubin was subsequently released by the Cuban police and eventually returned to the United States. In October 1959, she saw Appellant at an apartment of a mutual friend; also present were Mr. Frank Stillman and Mr. George Tallis. Mrs. Rubin told Appellant that she felt he owed her something for her inconvenience in attempting to negotiate the cashier's checks into travel tickets [R. T. 291, 292]. Appellant told her that the money represented by the checks was not his and, therefore, he would not be responsible. He then told her to call Mr. George Wilson [R. T. 292].

Mr. Jacob Ben-Porat, a business associate of Appellant, testified that in July or August 1959, he was discussing the international situation with Appellant. A conversation ensued wherein Porat told Appellant that he hoped Appellant did not have any money tied up in Cuba, and Appellant stated: "No I don't; however, some of my clients and friends do." [R. T. 355, 357].

Eugene Warner, a Las Vegas, Nevada real estate broker, who was involved in the Carribean Liquor Distributors, Inc. with Appellant and Louis Brady, stated that during several organizational meeting Appellant advised the group that he had applied for the Schenley distributorship in Cuba and introduced George Wilson. Warner stated that Wilson was the man who had financed the arrangement and that the $50,000 deposited in the Cuban bank belonged to

George Wilson [R. T. 319, 325].

Appellant's legal secretary and bookkeeper from August 1956 through April 1960, Pauline Sherry, testified that in 1959, Appellant told her that the $42,000 on deposit in Cuba belonged to Wilson, and that he (Appellant) was going to try and recover it [R. T. 180, 181, 190].

Special Agent Paul G. Mahon, Intelligence Division, Internal Revenue Service, testified that he interviewed Appellant on August 20, 1962, at Beverly Hills, California. Appellant stated that he was involved in the Cuban transaction which resulted in a $50,000 loss, and that the money was the funds of Mr. George Wilson [R. T. 335]. Agent Mahon also stated that Appellant had informed him that the money had been deposited in a Cuban bank, and was subsequently impounded by the Castro government.

Robert M. Abels, Revenue Agent, Internal Revenue Service, testified that he made an examination of Appellant's books for the years 1956 through 1959, and that Appellant's records did not reflect any loss or confiscation of a bank account in Cuba in the amount of $50,000, or any other amount [R. T. 388].

Bernard Lebe, a Certified Public Accountant, testified that he had maintained the books for Appellant for 1956, 1957, 1958 and 1959, and prepared Appellant's 1956, 1957, 1958 and 1959 income tax returns. In the years 1956, 1957 and a portion of 1958, Appellant and Mr. Lebe were associated together in an office [R. T. 532]. According to Mr. Lebe, Appellant had a good knowledge of tax law and accounting [R. T. 539]. Appellant in the early part of

1960, requested Lebe to get extensions of time in which to file the 1959 return. On April 11, 1960, Appellant filed a request for extension of time to file his return (Exhibit N). In the beginning of 1960, Appellant and Lebe discussed the $42,000 loss that occurred and Appellant told Lebe he wanted to claim it. Mr. Lebe asked Appellant, "Are you sure that this is your loss? It appears to me that this is Mr. Wilson's loss." Appellant said, "No this is my loss". Lebe told Appellant, "This in the face may seem like your loss but until you part with net worth if you owe this money to Mr. Wilson you must part with net worth before you take a loss." Appellant then told Lebe, "You take my word for it this is my loss and don't go into any detail about the investment or the type of investment" [R. T. 539, 540]. Because Appellant insisted upon claiming the loss in his return, Lebe refused to sign the return [R. T. 540]. Appellant's books did not reflect the $42,000 loss he claimed on his return [R. T. 538]. After Lebe had prepared the return, he again discussed the loss figures shown on the return with Appellant. Lebe refused to sign the return because it did not show correct information [R. T. 537]. In response to a question: "Did you find anything in the books showing the Cuban loss of Mr. Bromberg of $42,000?" [R. T. 544-545]. Mr. Lebe stated:

> I wanted to terminate my relationship with preparation of this return. During the summer months I told Mr. Bromberg that I didn't believe that the loss [$42,000] was his. Finally I told him I could prepare the return but I'm not going to sign

it. I thought he would probably have somebody else prepare the return. He said, 'You prepare the return and I will sign it.' [R. T. 545].

The Barnhart-Morrow loss of $21,000 claimed on the 1959 return likewise did not come from Appellant's books, but rather Mr. Lebe received that information from Appellant [R. T. 545].

Based upon the 1959 return Lebe prepared the applications for refund, Claim 843 and application for tentative carryback adjustments form 1045, and left these and the 1959 tax return with Appellant. Appellant executed these documents and filed them with the Treasury Department [R. T. 570, 571, 576, Exhibits 1D, 2A through 2D).

Mr. Wilson testified that Appellant told him that he (Appellant) felt responsible for getting Wilson involved in the $50,000 loss [R. T. 238]. Appellant's counsel in cross-examination, asked Wilson: "After it became apparent that this money was not going to be returned, after you had these discussions with the defendant after he expressed to you his feeling of responsibility, did you ever say to him 'pay me when you can?' Answer: No." "Question: Nothing like that last portion of the conversation ever occurred? Answer: No." [R. T. 238, 239]. Wilson testified that he never asked Appellant to pay the $50,000, and never looked to him (Appellant) for repayment [R. T. 251].

Robert J. McKenzie, a C. P. A., who handled Mr. Wilson's books and prepared his tax returns testified that Wilson's books

reflected the $50,000 as a receivable from Carribean Liquor Distributors, Inc. during 1959, and this sum was subsequently written off as uncollectible during 1959 [R. T. 260].

Appellant testified that after the $50,000 was deposited in the bank account in the Banco Continental, he did not consider it to be his money but rather either Mr. Wilson's or the corporation's [R. T. 956]. After the January attempt to withdraw the money from Banco Continental by check, Appellant did nothing more until July 1959 [R. T. 958]. Appellant stated that he went to Cuba in July 1959, and received $42,000, consisting of three cashier's checks in Cuban pesos. These checks were in the amount of $14,000 each [R. T. 962-964]. At the time Appellant received these checks he considered the funds to be Mr. Wilson's money. Appellant testified that in July following his return from Cuba, he had an opportunity while in Miami, Florida to discount the $42,000 worth of cashier's checks for approximately $30,000. He considered the proposition and turned it down [R. T. 965]. Appellant testified that after he learned the checks were seized by the Cuban government, he told Mr. Wilson that he felt "very badly", that he had malpractice insurance, and suggested that Mr. Wilson bring a claim against Appellant so that the insurance company could suffer the liability [R. T. 972]. Appellant testified that up until the time the money was confiscated he thought it was Mr. Wilson's. "When it was confiscated I thought it was mine." [R. T. 973]. In response to the question, "When the deduction was taken in the 1959 tax return why did you take it for $42,000 instead of $50,000?"

Appellant answered: "Because $42,000 is what I have lost out of confiscation." [R. T. 975].

2. Understatement of Income

The 1959 return filed by Appellant and his wife on December 12, 1960, stated that Appellant's gross income for 1959 was $69,485.32. The government contended at trial that Appellant willfully failed to include as part of his gross income for 1959, an additional $32,999 and that Appellant's gross income for 1959 was $102,484.25. The additional $32,999 was comprised of $3,000 - paid to Appellant by Henry Ventura and $29,000 paid to Appellant by Atwood Richards, Inc.; Total - $32,999. During counsel's closing argument the court indicated that it did not accept the testimony of Mr. Henry Ventura relative to the $3,000 of income to Appellant for 1959. The government therefore will not review the facts relating to this particular item in view of the relatively small amount of this item and the court's observation. Additionally, as is discussed supra, during the trial Appellant admitted there was an additional $15,641 of fees not reported on the 1959 return which resulted from Appellant's receipt and sale in 1959 of Goldfield Rand stock, discussed infra [R. T. 737].

a. The Atwood Richards Transactions.

On March 30, 1959, Appellant as an officer of Volume Industries, a California corporation (which was at this date suspended for nonpayment of taxes) negotiated with and signed a contract (Exhibit 7A) with Tom Corradine and Associates, a motion picture distributor. Under the terms of this contract Volume Industries, Inc. received the rights for a period of two years to 90 "Little Rascal" films for $15,000 [R. T. 56]. Under the terms of the contract payments were to be made from Volume Industries, Inc. All the negotiations in connection with this transaction were conducted by Appellant who instructed Mr. Tom Corradine to indicate Volume Industries, Inc. as the purchaser in the contract [R. T. 66].

In May 1959, Appellant then negotiated with John T. Reynolds, who was a vice-president of KHJ-TV, concerning the exchange of the right to show the "Little Rascal" film series for time on KHJ-TV. As a result of these discussions, a "trade deal" was made wherein KHJ-TV delivered to Volume Industries, Inc., a total of 1,248 spot announcements in exchange for the rights to telecast the "Little Rascals" on KHJ-TV [R. T. 73, Exhibits 8A and 8B]. Mr. Reynolds dealt only with Appellant [R. T. 278] and never met any other person at Volume Industries, Inc. Reynolds testified that Appellant had approached him on other occasions about similar types of deals [R. T. 274].

Appellant, via Volume Industries, Inc., then entered into

an agreement (Exhibit 9A) in May 1959, with Atwood Richards, Inc. (hereafter "Atwood"), whereby Atwood paid $49,999.92 to Volume Industries, Inc. for the 1,248 spot announcements on KHJ-TV [R. T. 151]. The payment involved two checks totaling $15,000, and 12 notes payable in the amount of $2,916.60 each. These notes, which were non-interest bearing, were given to Appellant in June 1959, and payable on a monthly basis thereafter. All the negotiations between Atwood and Volume Industries were conducted by Appellant [R. T. 149]. Under the terms of the assignment agreement (Exhibit 9A) Atwood paid $15,000 cash and executed 12 monthly promissory notes, each in the amount of $2,999.66 (Exhibit 9C). Between June 8 and August 3, 1959, Appellant received a total of $20,833.32 from Atwood ($15,000 cash and payment of 2 notes).

Mr. Jaques M. O'Rourke, who was President of Peoples Finance & Thrift Company of Beverly Hills in 1959, testified that Appellant approached him with a letter dated July 29, 1959 (Exhibit 10A2), which assigned the Atwood notes from Volume Industries to Appellant. Effective July 29, 1959, Appellant assigned to Peoples Finance & Thrift Company the $29,166.60 worth of notes (10 notes, each in the amount of $2,916.66). Under this arrangement with Peoples Finance & Thrift Co., Appellant realized $24,000 and Peoples Finance & Thrift received $5,000 as their discount fee [R. T. 119, 121, Exhibit 10A2).

The income Appellant received from the transaction as computed by the government was as follows:

Exhibit	Date	Amount	
9C	6/8/59	$ 13,000.00	(check)
9C	6/10/59	2,000.00	(check)
9C	7/1/59	2,916.66	(note)
9C	8/3/59	2,916.66	(note)
9C	7/29/59	29,166.60	Ten notes in amount of $2,916.66 were assigned to the Peoples Finance & Thrift Company
		$ 49,999.92	
7A		15,000.00	Cost of acquisition of "Little Rascals"
		$ 34,000.92	
10G		5,000.00	Cost of discount by Peoples Finance & Thrift Company
	PROFIT	$ 29,999.92	

Although the contracts concerning the purchase, sale and assignment of the rights of the "Little Rascals" were all negotiated in the name of Volume Industries, Inc. they were negotiated solely by Appellant. At the time Appellant was negotiating with Mr. Corradine, Mr. Reynolds, Mr. Rosenblatt, and Mr. O'Rourke, Volume Industries, Inc. existed in name only as Volume Industries, and had been suspended in the State of California for non-payment of taxes on January 2, 1958 (Exhibit 4B). On September 21, 1959

(after the above negotiations were transacted), Volume Industries corporation was revived by the issuance of a notice of revival (Exhibit 4C). In addition to Appellant, the other directors of Volume Industries, Inc. signed the Articles of Incorporation, i.e., Frank Stillman, Charles S. Paul and Pauline Sherry, solely as a matter of accommodation for Appellant and were directors in name only. No directors' meetings and/or shareholders' meetings were ever held to the knowledge of these individuals and they received no salary for holding the position of directors [R. T. 132-135, 142-144, 181]. Volume Industries, Inc. never issued any stock [R. T. 181], nor did it have a book of stock certificates [R. T. 182]. Volume Industries, Inc. filed no corporate tax return during the years 1958-61. In a letter to the Internal Revenue Service dated April 29, 1964 (Exhibit 11) in response to a subpoena requesting certain records from Volume Industries, Appellant stated that he did not have the records and "Volume Industries, Inc. is defunct and actually never operated as a corporation" (emphasis added).

b. Income From Goldfield Rand Stock.

Appellant's accountant, Mr. Melvin Singer, testified at the trial that in addition to the fee income in the amount of $69,485.00, Appellant received as a fee Goldfield Rand Stock [3/] which he sold

3/ Agent Abels noted this on his capital gains schedule (Exhibit 21A).

in 1959 and realized the sum of $15,641.22 which was not reported on Appellant's return, but which was reflected in Appellant's books and records [Exhibit 12A-K, R. T. 737, 825]. Appellant on cross-examination admitted that he received this sum and that it was not reflected on his return [R. T. 128].

c. Testimony of Revenue Agent Abels.

Robert M. Abels, the Revenue Agent who made an audit of Appellant's books [Exhibits 12A-K, R. T. 380-381] for the years 1956-59, reconciled the income from the books with the income reported for the year 1959 from Appellant's 1959 return (Exhibit 1B). Mr. Abels testified that there was no income reported in Appellant's records from Atwood, Peoples Finance & Thrift Company, Tom Corradine and Associates, John Reynolds or KHJ-TV (Exhibit 1D) and that the 1959 return reflected no income to Appellant for this transaction [R. T. 388].

Agent Abels testified that Appellant's books were a standard double entry system consisting of a general ledger, general journal, cash receipts record, cash disbursements record, revenue record, accounts receivable ledger, and a payroll record. Agent Abels made a reconciliation of the $67,485.03 reported on Appellant's 1959 tax return (Exhibit 1B) in a lum sum as legal fees, with the fees recorded on Appellant's books and arrived at an itemized list which reflected the client and the amount paid and totaling the sum

of $67,485.93. In making this reconciliation, Abels notes $2,000 salary from Wilson Mortgage Company, which was reflected separately on Appellant's 1959 return, and an item in account 403 of the books entitled "Miscellaneous Income", in the amount of $2,227.77, which sum was not reflected on the return. 4/ Exhibit 19 sets forth the recapitulation of Appellant's book, which reflects a total income per books of $71,730.70.

Even though the government conceded before the court that the expenses claimed on the return were not contested for the purpose of this case, Appellant insisted upon cross-examining Mr. Abels, over government objection,on what the books reflected [Exhibit 12 series, R. T. 406-409], and what Mr. Abels' analysis of the books showed. Mr. Abels testified that the sum total of the expenditures reflected in the books, indicated expenditures in the amount of $109,121.62 [R. T. 391]. Although the books reflected a greater amount of expenditures then did the return, Mr. Abels testified that his analysis of the books indicated that Appellant had overstated his expenses and losses per books (aside from the Cuban bank account transaction and Atwood Richards matter) in the amount of $19,716.00. As the Barnhardt Morrow loan of $21,649.46 claimed on the return was only substantiated in the books in the amount of $10,267.13, this resulted in an overstatement in the amount of $11,382.00. The books reflect that Appellant's advance costs were approximately $26,000, while Appellant claimed on his

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4/ This sum was not included in the indictment and is not included in the computations herein.

return that his advance costs were $34,577.75, making a total of approximately $19,000. The net effect of this has reduced Appellant's loss in the approximate sum of $5,913.28, below that reported on his return [R. T. 503]. Appellant on his 1959 report did not report any capital gains or losses. However, in cross-examination the question of Appellant's books reflecting capital gains or losses was raised. On redirect Agent Abeles was asked whether Appellant's books reflected the purchase and sale of stock, and testified that in his examination Appellant's books reflected stock purchases, which indicated a capital gain of approximately $43,000 [5/] which was not reported on Appellant's return [R. T. 495, Exhibit 21A]. Agent Abels testified that for the purposes of this case the government gave Appellant full credit for all expenses stated on his return [R. T. 390, 391].

d. Summary

Based on the addition of the sum Appellant realized through the sale of "Little Rascals" film series to Atwood Richards and the Goldfield Rand Stock which Appellant received as a fee in 1959 and sold for $15,641, Appellant's 1959 tax return should have reported:

5/ For the purposes of streamlining the Government's case, this sum was likewise not charged in the indictment.

Appellant's reported income	$ 69,485.00
Goldfield Rand Stock (Not Reported)	15,641.00
Appellant's income from Atwood Richards (Not Reported)	29,999.92
Corrected Income	115,125.00
Applying Appellant's losses as reported except for Cuban Bank Account:	
Appellant's reported expenses from legal practice	(93,862.25)
Loan to Barnhardt Morrow Corp.	(21,649.46)
	(115,511.71)
Corrected losses	(115,511.71)
Corrected Income	(115,125.00)
Correct net operating loss	$ (386.71)

Applying this net operating loss and carrying it back against Appellant's reported income for the year 1956, for which year he reports a net income of $16,923.27, the entire loss is used so that there is no operating loss to carry forward to the years 1957 and/or 1958 [R. T. 399].

IV

ARGUMENT

In view of Appellant's allegations of error relating to the insufficiency of the evidence on all counts of the indictment, it is appropriate to note a remark made by Judge Hall:

> As I stated during the trial I tried to find every way that I could to resolve the evidence against

the government and in favor of the defendant, but to me it seemed so overwhelming that I could not . . . .

[R. T. 1266, emphasis added].

It is, of course, fundamental that this Court must view the evidence together with all reasonable inferences in the light most favorable to the government. Noto v. United States, 367 U.S. 290 (1961) and Byrne v. United States, 327 F.2d 825 (9th Cir. 1964).

When the evidence is so viewed it indicates a willful and deliberate effort on the part of Appellant to purposely file a false tax return; thus, using, by means of a false carryback adjustment and claims for refund, the return as a vehicle for fraudulently reaching into the coffers of the United States Treasury.

A. THE EVIDENCE WAS SUFFICIENT TO CONVICT APPELLANT OF UNDERSTATING HIS INCOME AND OVERSTATING HIS NET LOSS ON HIS 1959 TAX RETURN.

The gist of the offense charged in Count One, i.e., violation of 26 U.S.C. §7206(1) is the willful making and subscribing of a tax return, which the signatory does not believe to be true and correct as to every material matter. Blumfield v. United States, 306 F.2d 892 (8th Cir. 1962). In creating the provisions in the Revenue Act of 1942 (cf. 619, 56 Stat. 798, §196) Congress was retaining the affect of the perjury statute which became inapplicable to tax returns by reason of the coincidental elimination of the requirement that such

returns be made and signed under oath. Cohen v. United States, 201 F. 2d 386, 393 (9th Cir 1953), cert. denied 345 U. S. 951.

In United States v. Rayor, 204 F. Supp. 486 (D. C. S. D. Cal. 1962) with regard to 26 U. S. C. 7206 (1), it was held that the government is not required to prove that an additional tax is due and owing for the year in which the false statement was made, since the existence of a tax liability is not an element of this offense. Judge Yankwich stated at pages 491-492:

> . . . (T)he Internal Revenue Service, if it is to audit properly the return and allow or disallow claimed deductions, must have complete and truthful disclosure . . . .
>
> Consequently, what is claimed as deductible from gross income must be stated truthfully as of utmost materiality. No doubt, this is the reason why Section 7206(1) stresses relief in the truthfulness and correctness of the statement to which the written declaration or verification is attached. Where truth is not present, the section is violated. Materiality in matters of this character lies in the "intent to protect the authorized functions of the governmental departments and agencies from the perversion that might result from the deceptive practices described (U. S. v. Gilliland, 312 U. S. 86, 93 (1941).

1. Appellant On His 1959 Tax Return Willfully and Knowingly Claimed a Loss of $42,000 Which He Did Not Sustain.

The fraudulent understatement of taxable income can result from the taking of false deductions. United States v. Ragen, 314 U. S. 513 (1941); United States v. Lennon, 246 F. 2d 24 (2nd Cir. 1957).

The evidence overwhelmingly establishes that the $50,000 deposited in the Banco Continental in Havana, Cuba in December 1958, was the sole property of Mr. George Wilson. Appellant's explanation that up until the time the remaining $42,000 was confiscated by the Agarian Land Reform in Cuba (August 1959), Appellant believed the money was Wilson's, but after it was confiscated, "I felt it was mine" [R. T. 973] is patently absurd. Particularly so, when Appellant admitted that Wilson never looked to him for repayment, never demanded repayment, never received payment from Appellant, and Appellant's own books did not reflect this sum as liability. Further, this alleged liability is nowhere to be found in a financial statement which Appellant on December 9, 1959, gave to the Security First National Bank (Exhibit 25).

Appellant spoke at length with his accountant, Mr. Lebe, in 1960 who continually told Appellant that he could not claim the $42,000 loss. Lebe finally told Appellant that if he insisted upon claiming this loss on his 1959 return Lebe would not sign it. However, Appellant stated to Lebe "you prepare it and I'll sign it"

which is exactly what Appellant did [R. T. 537, 538]. More compelling proof of willfully and knowingly making a false statement cannot be imagined and the court under the evidence before it could have made no other finding than it did.

2. Appellant On His 1959 Tax Return Willfully and Knowingly Understated His Gross Income In a Sum In Excess of $33,000.

Section 61 of Title 26, United States Code, provides in pertinent part that " . . . gross income means all income from whatever source derived . . .". Section 63 of Title 26, United States Code, provides in pertinent part " . . . the term 'taxable income' means gross income, minus the deduction allowed. . . .".

As was noted in the Statement of Facts, the court indicated it was disregarding an income item in the amount of $3,000, which the government sought to prove had been received by Appellant from Henry Ventura. This reduction did not affect the government's case for the reasons that (1) the government was not required to prove the exact amount alleged omitted, but only a substantial amount, United States v. Johnson, 319 U.S. 503 (1943), cert. denied 320 U.S. 808; (2) Appellant's admission through the testimony of Mr. Singer (Appellant's accountant at trial) established that the 1959 tax return did not include $15,641 fee income, received in 1959 in the form of Goldfield Rand stock which increases the omission in gross income to approximately $45,000 ($29,999 Atwood Richards

transaction plus $15,641).

a. Income From Atwood Richards.

The income from the Atwood transaction resulted in taxable income in the amount of $29,999.99 comprised of $15,000 and twelve notes in the amount of $2,916.00 with regard to the receipt of notes by a taxpayer. 26 C.F.R. 1.61-2(d) provides in pertinent part:

> (1) If services are paid for other than in money, the fair market value of the property or services taken in payment must be included in income . . . .
>
> (4) . . . Notes or other evidence of indebtedness received in payment for services constitute income in the amount of their fair market value at the time of transfer. A taxpayer receiving as compensation a note regarded as good on its face at maturity, but not bearing interest, shall treat as income as of the time of receipt its fair discounted value computed at the prevailing rate. See First National Bank v. Commissioner of Internal Revenue, 107 F.2d 143 (6th Cir. 1939).

The testimony of Mr. Corradine, Mr. Rosenblatt, Mr. O'Rourke and Mr. Reynolds clearly established that the profit to Appellant as a result of amounts received by Appellant through his acquisition

and sale of the "Little Rascals" film series was $29,999. Volume Industries, Inc., in whose name the requisite negotiations were transacted, was, by Appellant's own admission, a defunct entity which never operated as a corporation (Exhibit 11).

Contrary to Appellant's assertion at page 10 of his brief that the books (Exhibits 12A-12K) reflect income from Volume Industries to Appellant, it must be noted that account 201 of these books is entitled "notes and loan payable" and does not reflect income items. This account reflects that Appellant received loans from Volume Industries, Inc., which were recorded as liabilities in account 201 as follows:

Date	Amount
6/10/59	$ 11,500.00
6/15/59	1,675.00
7/14/59	1,900.00
8/7/59	2,900.00
	$17,975.00

The receipt of $17,975.00 from Volume Industries, Inc. was not reflected as income on Appellant's books, but as loans payable to Volume Industries, and these loans were never paid by Appellant [R. T. 467]. Appellant deposited all the proceeds from the "loans" from Volume Industries, Inc. into his personal checking account at the Citizens National Bank (Exhibit 6B). Appellant then caused Volume Industries to assign the remaining (10) notes to himself, which he in turn discounted with Peoples Finance & Thrift Corp. (Exhibit 10A-2). In view of the facts presented at trial, it is

apparent that Appellant was attempting to use account 201 as a vehicle of evading tax rather than as an income account as implied by counsel.

By the testimony of his accountant, Mr. Melvin Singer, CPA, Appellant at trial in fact conceded that the $29,999 from Atwood Richards, Inc. should have been reported on the 1959 tax return [R. T. 711]. Mr. Singer included this item in his recompilation of Appellant's income and expenses for 1959, which is set forth in Appellant's Exhibit Z49 at page 3 under the heading "Sale of Film -- the 'Little Rascals' ".

b. Income From Goldfield Rand.

Mr. Singer, who testified he spent approximately six months in auditing Appellant's records [R. T. 709-710], testified that based on his computations examination of Appellant's books and records and conversation with Appellant, Appellant had additional income which was not reported on the return in an amount of $22,533.00 (which included the Atwood Richards transaction) capital gains and $15,641 fee income. This latter item resulted from the sale of Goldfield Rand Stock, which Appellant received as a fee in 1959 and sold the same year [R. T. 736, 737]. In fact, Appellant did not even report any capital gains or losses on his 1959 return (Exhibit 1D). These two items conclusively establish that in his 1959 tax return Appellant grossly understated his income in the amount of $45,641 and make inescapable the court's finding that Appellant willfully

omitted these items from his return thus understating his gross income by that amount.

3. Summary

A comparison of Appellant's 1959 tax return with the evidence adduced at trial, indicates the following:

	Per Return	Per Trial
Income		
Fees - Legal Practice	$ 69,485	$ 69,485
Goldfield Rand Stock	- - -	15,641
Other		
Atwood Richards	- - -	29,999
TOTAL INCOME	$ 69,485	$115,125
Business Expense (Net)	93,862	93,862
Other Business (Losses		
Cuban Account	(42,000)	- - -
Loan to Barnhardt	- - -	- - -
Morrow defunct	(21,649)	(21,649)
NET LOSS	($88,026)	($386)

B. THE EVIDENCE SUPPORTS THE COURT'S FINDING THAT APPELLANT, BASED UPON HIS 1959 TAX RETURN, SUBMITTED A FRAUDULENT CLAIM FOR REFUND IN THE YEARS 1957 AND 1958 (COUNTS 2 AND 3).

Counts 2 and 3 charged a violation of 18 U.S.C. §287 which is commonly referred to as the "false claims clause" of the "False Claims Act". Provisions of §287 were formerly included in 18 U.S.C. §80; the other part of former 18 U.S.C. §80, containing what is often referred to as the "false statement clause" now appears in 18 U.S.C. §1001. Grainger v. United States, 346 U.S. 235 (1953). This statute proscribes the making or presenting of a claim, knowing it to be false or fraudulent.

Appellant in Counts 2 and 3 was charged with the presenting of a claim for refund, Form 843, and application for carryback adjustment, which was based upon his net operating loss claimed in his 1959 return.

Section 172 of the Internal Revenue Code, 26 U.S.C. §172, allows a taxpayer to deduct his net operating losses from his trade or business, as a deduction against prior income. The net operating loss can be carried back three years and is first carried back to the earliest of the three years. If it is not entirely used to offset income in that year, it is carried forward to the second year preceding the loss year, and any remaining amount is next carried to the taxable year immediately preceding the loss year.

In 1956, Appellant and his wife filed a joint return. In 1957

and 1958 Appellant filed a separate return and in 1959 filed a joint return (Exhibits 1A-1D).

The net income per returns for 1956-58 reported Appellant's taxable income as follows:

1956	-	$ 17,723
1957	-	33,100
1958	-	8,778

The net operating loss of Appellant for the year 1959 has been proven to be $386 rather than $88,026, which he claimed. Therefore, he has no loss to apply against his 1957 and/or 1958 income and accordingly his claim is false. Evans v. United States, 11 F.2d 37 (4th Cir. 1926). See also United States v. Knapp, 302 U.S. 214 (1937).

The narrative summary in the Statement of Facts, and in Argument abundantly establishes that Appellant's claims for refund in 1957 and 1958 were knowingly and fraudulently made and presented and that he was properly convicted on Counts 2 and 3.

C. THE COURT DID NOT COMMIT PREJUDICIAL ERROR IN EXCLUDING EVIDENCE AS TO APPELLANT'S INCOME AND EXPENSES FOR THE YEARS 1956, 1957 AND 1958, OR FOR YEARS SUBSEQUENT TO 1959.

The claim for refund, Claim Form 843 and application for tentative carryback adjustment for 1957 and 1958 (Exhibits 2A, 2C, 2D), stated that Appellant's application for refund was based upon a

net operating loss for the calendar year 1959, in the amount of $88,026.68. On page 2 of the application for tentative carryback loss the computations relating to the previous years for which a refund is requested are set forth, together with the adjustments affected by the carryback at the loss.

At trial, Appellant attempted to offer the testimony of Mr. Singer to prove that Appellant's returns, per Mr. Singer's calculations, were not correct and the following colloquial ensued:

> THE COURT: You propose to prove by this witness that his income tax return for 1956, '57 and '58 did not correctly reflect his income in that he had greater losses in those years than he showed?
>
> MR. PIC'L: Partially. There are some minor adjustments that were necessary in those years. They do affect the loss carryback in 1959 insofar as it relates to Counts 2 and 3.
>
> THE COURT: The important year here is the year 1959. The important thing is whether or not he did or did not have the losses which he claimed in 1959.
>
> MR. PIC'L: Perhaps I might make an offer of proof, your Honor, to explain why it is that these previous years' returns are necessary.
>
> I believe the returns that have been submitted show a taxable income in 1956 of approximately $17,000, '57 was approximately $33,000 and 1958

was between eight and nine thousand. Because of some minor adjustments the return for 1958 instead of showing a taxable income between eight and nine thousand should have shown a loss of approximately $24,000 which would have been carried back to 1956 and completely eliminated the $17,000 taxable income in that year. There remained approximately $9,000 of loss which could have been carried into 1957.

The 1957 income was $33,000 after deducting the $9,000. There was $24,000 of taxable income in 1957 and none in '58.

Then when the 1959 return is correctly computed as this witness has done and will so testify, the carryback from 1959 no longer has to go to '56 and not to '58 but rather through '58 to '57 to the amount of $24,000 and then carried forward.

Significance of the 1960 computations is that regardless of what occurred in 1959 the time of the filing of the return in December of '60, an additional loss occurred which was within the knowledge of the defendant.

Those losses he was entitled to carry back to '57, '58 and '59 if there had been taxable income.

This will tend to show lack of intent upon the part of defendant insofar as relates to Counts 2 and 3.

The witness's testimony as to 1959 will explain in part why the defendant believed the return to be accurate when he signed it.

THE COURT: I do not think that that testimony is admissible, counsel. I think we are concerned here with the 1959 statement at the time he made it out and with the application, the intended application, for a tentative carryback which he filed and which is now in evidence as Exhibit 2-A and the applications for refunds or reductions, whatever you might call them. [R. T. 606-608].

The material which Appellant sought to introduce relative to the incorrectness of Appellant's tax return 1957 and 1958, thereby impeaching his tax returns for those years, was neither relevant nor material to the false claims for refund in 1957 and 1958, since the false claims were based upon the false operating loss which Appellant claimed on his 1959 tax return. To be "relevant" means to relate to the issue. To be "material" means to have probative weight, i. e., likely to influence the tribunal in making a determination required to be made. Weinstock v. United States, 231 F. 2d 699, 701 (D. C. Cir. 1956).

Assuming arguendo that Appellant would have established a loss for the year 1958 (the return he filed for that year reflected taxable income of $8, 778. 92) this would not have altered the fact that his claim for refund was presented and the refund granted on

the basis of the nonexistent net operating loss claimed on his 1959 return.

Judge Yankwich's observations in the case of United States v. Rayor, supra, that:

> . . . The Internal Revenue Service, if it is to audit properly the return and allow or disallow claimed deductions must have complete and truthful disclosure . . . the auditing of the return, in the light of the returns for other years, which later developed that the omission of these falsely claimed deductions would have made no difference in the defendant's tax liability for the year [in question] cannot be retrojected to the date of the false statement, so as to confer verity on it, ...

is equally appropos to Appellant's claims for refunds.

The government was entitled as of the date Appellant claimed refunds and applied for tentative carryback adjustment were filed, to the basis upon which Appellant made his claim. Once the stated basis is shown not to exist, the claim is false. Evans v. United States, 11 F. 2d 37, 39 (4th Cir. 1926). In Evans, the court affirmed the conviction of Evans for filing a false claim for refund and stated:

> The statements [in the claim for refund] were obviously made for the purpose of showing compliance . . . and were intended to be considered by the Commissioner as a part of the claim in passing

upon the demand for refund. Claims against the government invariably and necessarily consist of statements of fact in connection with demands for payment, and it would be a perversion of language to say that a false statement of fact made in connection with the demand and as the basis thereof, does not constitute a false claim within the meaning of the statute.

Appellant sought to establish and claim his right to a refund on the basis of his 1959 return and in fact secured a refund of the taxes paid in 1957 and 1958. He could not thereafter seek to impeach the very documents upon which he asked the government to rely. United States v. Rayor, supra; United States v. Knapp, supra; C. F. Kay v. United States, 303 U.S. 1 (1937).

In United States v. Stoehr, 196 F. 2d 276 (3rd Cir. 1962), cert. denied 344 U.S. 826, a prosecution for tax evasion (26 U.S.C. 7201) for the years 1943, 44 and 45, it was held that the trial court properly excluded defendant's tax return for 1946, as well as defendant's offer in 1948 to compromise his tax liability for these years by paying $350,000. The court stated that when a defendant offers evidence consisting of subsequent statements and conduct to show his mental state, the trial court:

'in making its ruling must consider the circumstances of the individual case. Its inquiry in each instance must be: Is the evidence of defendant's subsequent mental state (which evidence is supplied by the

subsequent act) of any probative value in establishing his state of mind at the time of the alleged criminal act, and if so does the evidence not unduly entangle the issue or confuse the jury? If the defendant . . . had promptly filed an amended return and made payment of the additional sum owed we think such evidence may well have been admissible.

While the Government must prove additional tax due and owing in a prosecution for tax evasion, 26 U.S.C. §7201, Holland v. United States, 348 U.S. 121 (1954), a tax liability is not a prerequisite to conviction for either 26 U.S.C. §7206(1), United States v. Rayor, supra, or 18 U.S.C. §287, Evans v. United States, supra. The gravamen of these offenses is not whether the Government is actually defrauded, suffers monetary loss, or even is induced to act, Brawdow v. United States, 268 F.2d 364 (9th Cir. 1959), but rather it is the untruthfulness stated in the document submitted which is calculated to work a deceptive practice upon the governmental agency involved; and when truth is not present the sections are violated.

Although defendant was a practicing attorney in 1960, 61, 62 and 64 [R. T. 1125] from 1960 through 1964 Appellant filed no income tax returns [R. T. 1022]; nor did he file any amendments to his 1956, 57, 58 and 59 returns [Ex. 1A through 1D). The attempt of Appellant six years later - at the time of trial - to suddenly recast what he had reported in his tax returns for 1956, 57 and 58 and what

he did not report in 1960 through 1964 (he testified he stopped maintaining books and records in July, 1960 [R. T. 1178])could not be of any probative value to the court in determining what Appellant's intent was as of December 10, 1960, when Appellant filed his 1959 return and claims for refund.

V

CONCLUSION

Appellant in the conclusion of his brief alludes to his position as an attorney and the attendant consequences of his conviction on his profession. The court below was extremely conscious of this fact and the Reporter's Transcript amply demonstrates that Appellant was given every consideration by the learned trial judge who found that the evidence overwhelmingly demonstrated Appellant's guilt.

In view of Appellant's reference to his position as a member of the bar, this Court's attention is specifically invited to Appellant's testimony [R. T. 856-1186] which can only be characterized as shocking; a few examples are:

(a) Appellant didn't realize his 1959 return was not an accurate portrayal of his books until the time of trial [R. T. 917].

(b) Income from Atwood Richards was not reported on his 1959 return as Appellant didn't advise Mr. Lebe because "I forgot about it" [R. T. 930].

(c) Volume Industries never filed a tax return in 1960 because it "never occurred to me" [R. T. 932].

(d) At the time Appellant signed his 1959 return, he didn't realize he didn't include a capital gains and loss schedule [R. T. 933].

(e) Until the time of trial, Appellant didn't realize Mr. Lebe hadn't signed his 1959 return [R. T. 1005].

(f) In testifying to an alleged loss in 1959 on the sale of Trans Union Stock, he stated "I decided I had that loss the other day" [R. T. 1058].

(g) In 1959 and 1960 Appellant never examined the books and records maintained in his office [R. T. 1007-1008].

(h) Appellant never filed tax returns from 1960 through 1963 because "I didn't have any income, I sustained additional losses, I had as I say this alcholic problem and then this investigation started" [R. T. 1023].

Appellant's testimony is in direct contradiction in many material respects to that of the other witnesses in the trial. In fact, Appellant even contradicted the computations arrived at by his own accountant, Mr. Singer [R. T. 1052]. A typical example of the patent falsity of Appellant's testimony is his testimony that in 1959 he loaned Mr. Eugene A. Easton $7,000 which was not repaid, and "I am therefore entitled to deduct it in 1959". The $7,000 was so deducted in Mr. Singer's and Appellant's recomputations [R. T. 997]. Mr. Easton, a rebuttal witness, completely contradicted Appellant by testifying that the $7,000 received from defendant was not a loan, but rather reimbursement to Easton out of corporate funds for corporate expenses [R. T. 1200]. If a single moment of truth

occurred in Appellant's testimony it was when he admitted that in 1959 he had no qualms at all about making false statements about financial matters [R. T. 1184].

The Government submits that the record completely demonstrates that Appellant was properly convicted of the offenses charged, and that Appellant's conviction should be affirmed.

Respectfully submitted,

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

Attorneys for Appellee,
United States of America.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Robert L. Brosio

ROBERT L. BROSIO